SUCI MATHEWS NEE SUCI THOMAS

v.

THOMAS MATHEWS

HIGH COURT MALAYA, KUALA LUMPUR
LC VOHRAH J
[DIVORCE PETITION NO. 177 OF 1977]
20 MARCH 1985

FAMILY LAW: *Divorce - Section 54 of Law Reform* (*Marriage & Divorce*) *Act - Decree nisi pronounced and made absolute - Respondent died before decree nisi made absolute - Whether petitioner is a widow of the respondent - Whether decree absolute can be set aside.*

The marriage of the petitioner and the respondent was had and solemnised within the jurisdiction. On the basis of a petition for divorce filed by the petitioner, the Court pronounced a decree *nisi* for the dissolution of the marriage with the consent of the respondent under s. 54 of the Law Reform (Marriage & Divorce) Act 1976. On 25 February 1984 the respondent died but this fact was not known to the then solicitors of the petitioner who on 12 April 1984 applied under r. 53 of the Divorce and Matrimonial Proceedings Rules 1980 to make the decree *nisi* absolute. The decree *nisi* was made absolute on 13 April 1984.

The petitioner then applied to set aside the decree absolute.

Held:

[1] A decree *nisi* by its very expression is only a provisional order and does not as such determine the marriage. If a decree nisi is made, and the husband dies before it is made absolute, he dies while he is still at law a husband and his wife becomes his widow.

[2] As the marriage of the parties was dissolved by death on 25 February 1984 the petitioner became a widow on that date and the making of the decree absolute made after the death must be a nullity. As the decree absolute was a nullity the petitioner was entitled to have it set aside.

[Appeal allowed.]

Cases referred to:
Stanhope v. Stanhope [1886] 11 PD 103
Re Seaford (deceased) [1968] 1 All ER 482

Legislation referred to:
Law Reform (Marriage & Divorce) Act 1976, s. 54
Divorce and Matrimonial Proceedings Rules 1980, r. 53

For the petitioner/applicant - G. Vadiveloo; M/s Vadiveloo & Co.
For the Amicus Curiae - Balwant Singh; M/s Jagjit Singh & Co.
For the Watching Brief (for Estate of Respondent) - C. Abraham; M/s Shearn Delamore & Co.

JUDGMENT

LC Vohrah J:

Last week I allowed the petitioner's application in these divorce proceedings to set aside the decree absolute and directed the Senior Assistant Registrar to endorse on the decree *nisi* that the cause had abated. I indicated then that I would give my reasons later and I do so now.

The marriage of the petitioner and the respondent was had and solemnised within the jurisdiction on 9 November 1968. On the basis of a petition for divorce filed by the petitioner the Court on 26 April 1982 pronounced a decree *nisi* for the dissolution of the marriage with the consent of the respondent under s. 54 of the Law Reform (Marriage & Divorce) Act 1976. On 25 February 1984 the respondent died but this fact apparently was not known to the then solicitors of the petitioner who on 12 April 1984 applied to the Court under r. 53 of the Divorce and Matrimonial Proceedings Rules 1980 for the decree *nisi* to be made absolute. The decree *nisi* was accordingly made absolute on 13 April 1984.

It is clear that a petition for divorce is a suit for the dissolution of a marriage and affects the status of the parties to the marriage. It is also clear that a decree *nisi* by its very expression is only a provisional order and does not as such determine the marriage. Its effect was made abundantly plain in the Court of Appeal by Cotton LJ in *Stanhope v. Stanhope* [1886] 11 PD 103 where, in a different context, he said at p. 105:

> What is the position of the parties after a decree nisi? Neither of them can do anything in the suit until the time comes for making the decree absolute, but the suit is not at an end, it is still pending ...

What then is the position of a decree absolute that was made after the death of a spouse? The answer, in my view, has been forcefully provided in the same case by Bowen LJ who said at p. 108:

> A man can no more be divorced after his death than he can after his death be married or sentenced to death. Marriage is a union of husband and wife for their joint lives unless it be dissolved **sooner**, and the Court cannot dissolve a union which has already been determined. (Emphasis added)

and at p. 109:

> If a decree *nisi* is made, and the husband dies **before it is made absolute,** he dies while he is still at law a husband, and his wife becomes his widow ... (Emphasis added)

As the marriage of the parties was dissolved by death on 25 February 1984 the petitioner became a widow on that date and the making of the decree absolute on 13 April 1984 must be a nullity for (to borrow the words of the third Judge, Fry LJ in the same case at p. 111) "no power can dissolve a marriage which has been already dissolved by the act of God." This surely is a matter of common sense which has been very aptly expressed by Russell LJ in *Re Seaford (deceased)* [1968] 1 All ER 482 at p. 491 as follows:

> Whom God had put asunder no man could join together, even for the purpose of putting them asunder again ...

As the decree absolute was a nullity the petitioner was, in my judgement, entitled *ex debito justitiae* to have it set aside and I accordingly exercised my inherent jurisdiction in doing so.

Mr. Balwant Singh of the firm of solicitors who previously acted for the deceased respondent was requested by the Court to act as *amicus curiae* and Mr. Cecil Abraham of the firm of solicitors acting on behalf of the estate of the respondent held a watching brief with the consent of Mr. Vadiveloo and I would like hereby to express my appreciation to all three Counsel for their assistance in this matter.

Also found at [1985] 2 CLJ 496